

**TANKMASTERS SHIPPING CORPORATION, PLAINTIFF-APPELLANT,
VS. SHEKOU SOUTHERN CHINA LPG CARRIERS CO., LTD.,
DEFENDANT-APPELLEE.**

Ponente: ROXAS, J.

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ROXAS, J.:

Legal Principles in this Case:

Negligence in order to render one liable need not be the sole cause of an injury or damage. It is sufficient that his negligence, concurring with one or more efficient causes, is the proximate cause of the injury or damage. Accordingly, where several causes combine to produce injuries, one is not relieved from liability because he is responsible for only one of them, it being sufficient that the negligence of the person charged with injury is an efficient cause without which the injury would not have resulted to as great an extent, and that such cause is not attributable to the person injured.

The Case

In a collision of vessels, owners of each of the vessels involved sought to recover damages, imputing fault and negligence upon the other for having caused the mishap. The trial court dismissed the claims for damages of both vessel owners. Hence, this appeal filed by the plaintiff with this court.

The Facts

This is an Appeal under Rule 41 of the Revised Rules of Court, from the April 30, 2002 Decision[1] of the Regional Trial Court Manila, Branch 26, in Civil Case No. 94-69603, in an action for sum of money with preliminary attachment filed by plaintiff-appellant Tankmasters Shipping Corporation (TANKMASTERS), against defendant-appellee Shekou Southern China LPG Carriers Co., Ltd.

This action for sum of money springs from a collision that occurred in the waters of Saranggani Strait just off the coast of Davao on February 5, 1994 at about 1:40 o'clock in the morning, between MV Orient Star owned by plaintiff-appellant TANKMASTERS, and LPG/C Tai Long owned by defendant-appellee SHEKOU.

It was around 12:00 midnight when plaintiff-appellant TANKMASTERS' vessel, Orient Star, after unloading its cargo (consisting of bunker fuel) in Zamboanga, was sailing towards Davao at the speed of nine (9) nautical knots. Defendant-appellee SHEKOU's vessel, Tai Long, on the other hand, was sailing from the port of Davao towards the port of Batangas.

At a distance of about 6 to 8 miles from each other, the sidelights of each vessel, green on the starboard side (right side) and red on the port side (left side), were already very visible to the other, the lights indicating that the vessels coming from opposite directions would pass each other on their right sides.

When the distance between Orient Star and Tai Long was only about 1 mile, Tai Long suddenly changed its direction and steered its course to the starboard side (right side), eventually leading to the collision between the

two vessels, with Orient Star's bow hitting Tai Long's port side.

Both vessels dropped their anchor and waited until morning to assess each other's damage. Orient Star thereafter proceeded to Davao where Captain Odechique filed a marine protest[2] with the Philippine Coast Guard.

On March 3, 1994, plaintiff-appellant TANKMASTERS filed a Complaint[3] for sum of money with application for preliminary injunction against defendant-appellee SHEKOU, with the Regional Trial Court of Manila, Branch 26, docketed as Civil Case No. 94-69603. Plaintiff-appellant TANKMASTERS, owner and operator of Orient Star, alleged that the collision between Orient Star and Tai Long was solely attributable to the fault and negligence of the crew of Tai Long; that Orient Star suffered extensive damage, the repair and rehabilitation thereof would amount to at least Php800,000.00; that due to the damage, Orient Star would be dry-docketed for at least 20 days where it would be deprived of its gainful use, considering that the same had been chartered by Caltex Philippines, Inc. under a Continuing Voyage Contract,[4] for which defendant-appellee SHEKOU should be made to pay the loss of hire or freight for at least 20 days amounting to about Php1,900,000.00; and that a writ of preliminary attachment be issued against defendant-appellee SHEKOU, considering that the same was a non-resident foreign entity not doing business in the Philippines.

In an Order[5] dated March 4, 1994, the trial court issued a writ of preliminary injunction against defendant-appellee SHEKOU, upon plaintiff-appellant TANKMASTERS' filing of a bond in the amount of Php2.7 million. The writ of attachment was, however, upon motion[6] of defendant-appellee SHEKOU, lifted in an Order[7] dated March 25, 1994.

On April 22, 1994, defendant-appellee SHEKOU filed its Answer[8] with Counterclaim, averring that plaintiff-appellant TANKMASTERS' complaint failed to state a cause of action; that the collision was attributable to the fault and negligence of Orient Star's complement; that Tai Long used reasonable skill and care under the circumstances, in that it gave warning signals to Orient Star and changed her (Tai Long) course; that Orient Star was grossly negligent and ignorant and was in violation of navigational rules; that Orient Star was not properly equipped to navigate and was inadequately manned at the time of the collision occurred; that due to the fault and negligence of Orient Star, extensive damage was caused to Tai Long amounting to US\$168,000.00; and that due to the repairs done to Tai Long, it had to be dry-docketed, wherein it had been denied earnings amounting to about US\$133,800.00.

Assailed Decision of the RTC

On April 30, 2002, the Regional Trial Court of Manila, Branch 26, in Civil Case No. 94-69603, rendered the decision,[9] dispositive portion of which reads, to wit:

“WHEREFORE, PREMISES CONSIDERED, plaintiff's complaint is hereby ordered DISMISSED for lack of merit.

For lack of evidence, defendant's counterclaim for actual and compensatory damages is hereby DENIED.

Judgment is hereby rendered ordering the plaintiff to pay the defendant, the following:

- the amount of fifty thousand pesos as attorney's fees; and the cost of this suit.
- the cost of this suit.

SO ORDERED.”

A notice of appeal[10] was filed by plaintiff-appellant TANKMASTERS dated July 5, 2002.

Assignment of Errors

In the Brief[11] filed by plaintiff-appellant TANKMASTERS on February 14, 2003, it assigned the following errors:

- THE LOWER COURT ERRED IN HOLDING THAT THE COLLISION WAS DUE TO THE NAVIGATIONAL FAULT OF PLAINTIFF-APPELLANT'S ORIENT STAR IN THAT:
- THE PROXIMATE CAUSE OF THE COLLISION WAS DUE TO THE FAULT AND/OR NEGLIGENCE OF DEFENDANT-APPELLEE'S TAI-LONG'S CREW, AS SHOWN BY THE FOLLOWING:
- THEY REFUSED TO ACKNOWLEDGE AND RESPOND TO ORIENT STAR'S REPEATED RADIO COMMUNICATION EVEN WHEN THE TWO VESSELS WERE STILL THREE (3) MILES APART.
- THEY SUDDENLY AND NEGLIGENTLY CHANGED TAI-LONG'S COURSE TO STARBOARD CONTRARY TO ORDINARY PRUDENCE THEREBY REDUCING THE PASSING DISTANCE BETWEEN TAI-LONG AND ORIENT STAR.
- THEY CONTINUED TO DISREGARD AND FAILED TO RESPOND TO ORIENT STAR'S PERSISTENT RADIO AND LIGHT COMMUNICATIONS IMMEDIATELY BEFORE AND AT THE TIME OF THE COLLISION.
- WORSE, INSTEAD OF FOLLOWING THEIR NORMAL COURSE, TAI-LONG SUDDENLY AND WITHOUT WARNING, CONTRARY TO ESTABLISHED INTERNATIONAL RULES OF THE ROAD, SWERVED TOWARDS ITS STARBOARD SIDE AND CROSSED ORIENT STAR'S PATH WHEN IT WAS ONLY ABOUT 800 FEET FROM THE ORIENT STAR THUS CAUSING THE LATTER'S BOW TO HIT THE FORMER'S PORT SIDE.
- THERE WAS NO NEED FOR ORIENT STAR TO COMMUNICATE TO TAI-LONG THE PROPER LIGHT SIGNAL TO AVOID A COLLISION SINCE A GREEN TO GREEN SIGHTING MEANS THAT BOTH VESSELS ARE PASSING EACH OTHER'S STARBOARD SIDE, WITH NO INDICATION OF A POSSIBLE COLLISION.
- ORIENT STAR'S CHANGE OF COURSE TOWARDS ITS PORTSIDE WHEN TAI-LONG WAS STILL ONE MILE AWAY WAS NOT A VIOLATION OF INTERNATIONAL RULES OF THE ROAD, BUT WAS AN EVASIVE ACTION ON ITS PART TO PREVENT A POSSIBLE COLLISION WITH TAI-LONG.
- THE LACK OF A LICENSE ON THE PART OF PLAINTIFF-APPELLANT'S SECOND OFFICER WAS NOT THE PROXIMATE CAUSE OF THE COLLISION, BUT TAI-LONG'S CREW'S FAULT AND/OR NEGLIGENCE.
- THE LOWER COURT ERRED IN NOT HOLDING DEFENDANT-APPELLEE LIABLE TO PAY PLAINTIFF-APPELLANT DAMAGES CONSISTING OF REPAIR COSTS, LOSS OF HIRE/FRIGHT, ATTORNEY'S FEES AND EXPENSES OF LITIGATION DESPITE THE FOREGOING FAULT AND/OR NEGLIGENCE OF TAI-LONG'S CREW.
- THE LOWER COURT ERRED IN HOLDING PLAINTIFF-APPELLANT LIABLE FOR ATTORNEY'S FEES SINCE THERE IS NO EVIDENCE TO JUSTIFY THE AWARD PER ARTICLE 2208, NEW CIVIL CODE.

The Ruling of this Court

The RTC decision must be modified because defendant-appellee is contributorily negligent.

The trial court correctly held that had plaintiff-appellant TANKMASTERS' Orient Star followed the Rules of the

Road and Regulations on the Prevention of Collision, as defendant-appellee SHEKOU maintained it did, the collision could have been avoided. The trial court held in favor of defendant-appellee SHEKOU and found that the collision was entirely due to the fault of the navigation of plaintiff-appellant TANKMASTERS' tanker, considering that Orient Star had not communicated the proper light signal to defendant-appellee SHEKOU's Tai Long.

Culled from the records of the case, as likewise averred by defendant-appellee SHEKOU,[12] plaintiff-appellant TANKMASTERS' Orient Star had indeed failed to communicate proper light signal to Tai Long, to wit:

“xxx As testified by Second Officer Zhou Xian Chun, when the Tai Long was still about 6 to 8 miles from the Orient Star, both of the latter's sidelights, the green on the starboard side and the red on the port side, can visibly be seen, which means that both vessels were sailing towards each other at almost the same path.”
(emphasis ours)

It is also stated in the Marine Accident Report[13] filed by Second Officer Zhou Xian Chun (ZHOU) of defendant-appellee SHEKOU, and in his deposition[14] dated October 22, 1997, that as far as 8 miles off, sidelights of the Orient Star can be seen from Tai Long.

Parenthetically, as testified to by both plaintiff-appellant TANKMASTERS' Second Officer Esmeraldo Avergonzando (AVERGONZADO),[15] and defendant-appellee SHEKOU's Second Officer ZHOU,[16] that if both of the sidelights of a vessel is visible, i.e., green light on the starboard side and red light on the port side, that indicates that the vessel is approaching head-on.

As correctly found by the trial court, nowhere in the records can it be found that Orient Star only had its green light on at the starboard side, thereby indicating what it had been maintaining that Orient Star had correctly signaled to Tai Long that it would pass starboard to starboard side. Tai Long had, as far as 8 miles off, its green light at the starboard side on, while Orient Star had both the green light at the starboard side and red light at the port side on, thereby, probably by mistake signaling a head-on approach to Tai Long, in turn prompting Tai Long to steer starboard side to avoid a possible collision, in compliance with the International Rules of the Road. Orient Star not having properly given the correct light signals to Tai Long, causing Tai Long to react thereto accordingly in accordance with the International Rules of the Road, cannot now seek redress from the courts for its own fault or negligence.

Rule 18 of the International Rules of the Road states, that when two power-driven vessels are meeting end on, or nearly end-on, so as to involve a risk of collision, each shall alter her course to starboard, so that each may pass on the port side of the other.[17] Orient Star was in violation of the rules of the road when it instead steered port side, when it should have steered starboard side, or had just maintained its course at that.

An act may be negligent if it is done without the competence that a reasonable person in the position of the actor would recognize as necessary to prevent it from creating an unreasonable risk of harm to another.[18] Those who undertake any work calling for special skills are required not only to exercise reasonable care in what they do but also possess a standard minimum of special knowledge and ability,[19] as in the crew of both vessels in this case at bench.

Plaintiff-appellant TANKMASTERS maintains that there was no need for Orient Star to communicate the proper light signal since a green to green sighting means that both vessels are passing each other's starboard side.

Be that as it may, findings of fact in this case at bench reveal that although Tai Long had its green light at the starboard side on, Orient Star had both its lights on, green at the starboard side and red at the port side, which indicates a head on approach, which in turn caused Tai Long to steer starboard to avoid the collision. Thus,

plaintiff-appellant TANKMASTERS cannot fault defendant-appellee SHEKOU for having “changed its course” when it steered starboard to avoid the collision which nonetheless occurred.

We, however, find defendant-appellee SHEKOU’s Tai Long contributorily negligent. Tai Long was equipped with a radar which was functioning that night; Tai Long’s Second Officer ZHOU had sighted the Orient Star on his radar screen while the latter was still ten (10) miles away; and visual confirmation of radar contact was established by Tai Long while the Orient Star was still 6 to 8 miles away. In the total set of circumstances which existed in the instant case, had Tai Long taken its duty of extraordinary diligence seriously, it could have easily avoided the collision with the Orient Star. Indeed, Tai Long might well have avoided the collision even if it had exercised ordinary diligence merely.

It is true that the Orient Star failed to follow Rule 18 of the International Rules of the Road which requires two (2) power-driven vessels meeting end on or nearly end on each to alter her course to starboard (right) so that each vessel may pass on the port side (left) of the other. Orient Star changed its course from 70° to 60° port side when it was about a mile away from Tai Long, while the Tai Long, when the two (2) vessels were only about 800 meters apart, veered hard to starboard. However, “route observance” of the International Rules of the Road will not relieve a vessel from responsibility if the collision could have been avoided by proper care and skill on her part or even by a departure from the rules.[20]

Tai Long, having sighted the Orient Star when it was still a long way off was negligent in failing to take early preventive action and in allowing the two (2) vessels to come to such close quarters as to render the collision inevitable when there was no necessity for passing so near to the Orient Star as to create that hazard or inevitability, for the Tai Long could choose its own distance. It is noteworthy that the Orient Star upon turning hard to port shortly before the moment of collision, signaled its intention to do so by giving two (2) short blasts with its horn. Tai Long gave no answering horn blast to signal its own intention and proceeded to turn hard to starboard.

It may be said, as a general rule, that negligence in order to render one liable need not be the sole cause of an injury. It is sufficient that his negligence, concurring with one or more efficient causes, is the proximate cause of the injury. Accordingly, where several causes combine to produce injuries, one is not relieved from liability because he is responsible for only one of them, it being sufficient that the negligence of the person charged with injury is an efficient cause without which the injury would not have resulted to as great an extent, and that such cause is not attributable to the person injured.[21]

It is no defense to one of the concurrent tortfeasors that the injury would not have resulted from his negligence alone, without the negligence or wrongful acts of the other concurrent tortfeasor. Where several causes producing an injury are concurrent and each is an efficient cause without which the injury would not have happened, the injury may be attributed to all or any of the causes and recovery may be had against any or all of the responsible persons although under the circumstances of the case, it may appear that one of them was more culpable, and that the duty owed by them to the injured person was not the same.[22]

No actor’s negligence ceases to be a proximate cause merely because it does not exceed the negligence of other actors. Each wrongdoer is responsible for the entire result and is liable as though his acts were the sole cause of the injury.[23]

Finally, since defendant-appellee SHEKOU is guilty of contributory negligence in the mishap that was precipitated by plaintiff-appellant TANKMASTERS, defendant-appellee SHEKOU is not entitled to an award of attorney’s fees.

The Fallo

WHEREFORE, premises considered, the April 30, 2002 Decision of the Regional Trial Court of Manila, Branch 26, in Civil Case No. 94-69603, is hereby MODIFIED in that the awards of attorney's fees and costs of suit in favor of defendant-appellee, are hereby DELETED.

SO ORDERED.

Reyes, (Chairman) and De Guia-Salvador, JJ., concur.

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- [1] Rollo. Page 70
- [2] Original Records. Page 14
- [3] Original Records. Page 1
- [4] Original Records. Page 305
- [5] Original Records. Page 16
- [6] Original Records. Page 47
- [7] Original Records. Page 84
- [8] Original Records. Page 94
- [9] Rollo. Page 70
- [10] Original Records. Page 1077
- [11] Rollo. Page 26
- [12] Appellee's Brief. Rollo. Page 106
- [13] Original Records. Page 853
- [14] Original Records. Page 865
- [15] TSN. February 24, 1995. page 3
- [16] Original Records. Page 866
- [17] Negros Navigation Co., Inc. vs Court of Appeals, GR#110398, November 7, 1997, 281 SCRA 534
- [18] Mindex Resources vs Morillo, GR#138123, March 12, 2002 379 SCRA 144
- [19] Far Eastern Shipping Co. vs Court of Appeals, GR#130068, October 1, 1998, 297 SCRA 30
- [20] Negros Navigation Co., Inc. vs Court of Appeals, GR#110398, November 7, 1997 281 SCRA 534
- [21] Far Eastern Shipping Co. vs Court of Appeals, GR#130068, October 1, 1998, 297 SCRA 30
- [22] Far Eastern Shipping Co. vs Court of Appeals, GR#130068, October 1, 1998, 297 SCRA 30
- [23] Far Eastern Shipping Co. vs Court of Appeals, GR#130068, October 1, 1998, 297 SCRA 30

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